

UNITED STATES
PATENT AND TRADEMARK OFFICE



Patent Public Advisory Committee Quarterly Meeting

Post Grant Outcomes

Jack Harvey

Assistant Deputy Commissioner for Patent Operations
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Objectives of Post Grant Outcomes

The purpose of this program is to learn from all post grant proceedings and inform examiners of their outcomes

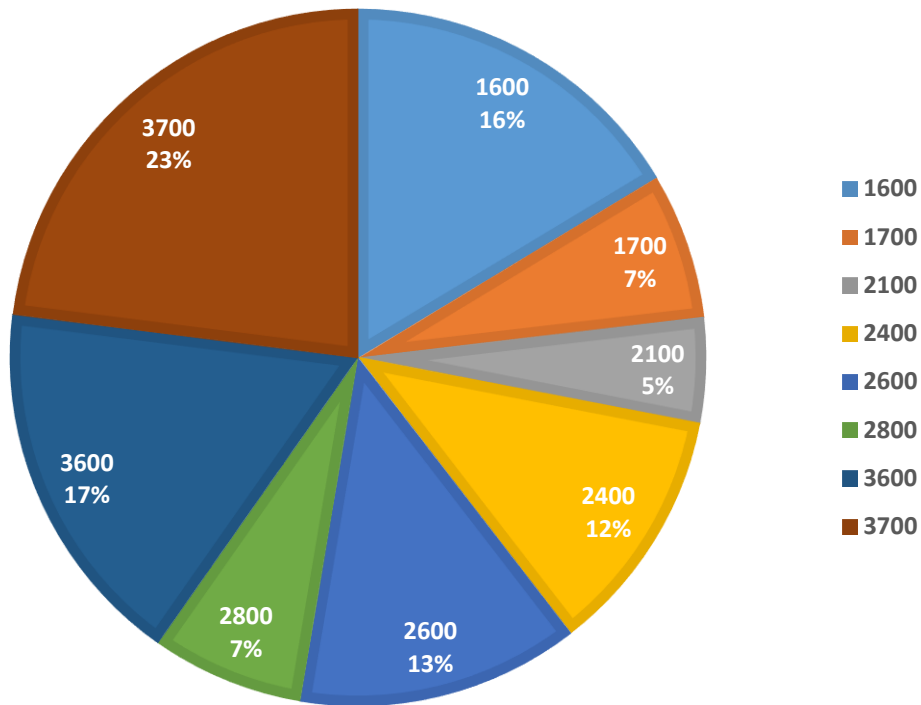
- Propose **three** objectives to accomplish this:
 - **Enhanced Patentability Determinations in Related Child Cases**
 - Provide examiners with prior art submitted during PTAB AIA trial proceedings
 - Other petition information, expert testimony, declarations, interpretations...
 - **Targeted Examiner Training**
 - Data collected from the prior art submitted and examiner behavior will provide a feedback loop on best practices
 - **Examining Corps Education**
 - Provide examiners a periodic review of post grant (and post examination) outcomes focusing on technology sectors

Objective 1 - Enhanced Patentability Determinations in Related Child Cases

- A Pilot to:
 - Identify those patents being challenged at the PTAB under the AIA Trials that have pending related applications in the Patent Corps
 - Provide the examiners of those pending related applications access to the prior art submitted with the IPR petition

Objective 1 – Pilot Statistics

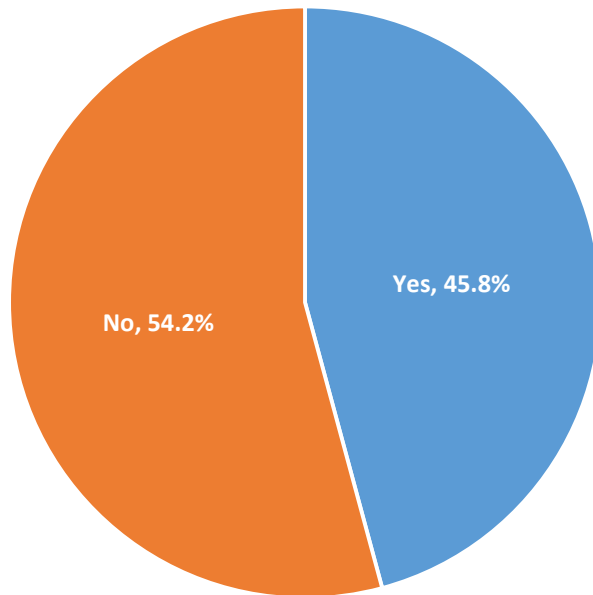
DISTRIBUTION OF PILOT APPLICATIONS
BY TECHNOLOGY CENTER: PP15-PP21



Technology Center	Number of Pilot Applications
1600	111
1700	46
2100	33
2400	78
2600	89
2800	48
3600	117
3700	156
Grand Total	678

Objective 1 – Pilot Statistics cont.

In the Office Action of the child case, did the examiner refer to any of the references cited in the AIA trial petition of the parent case?

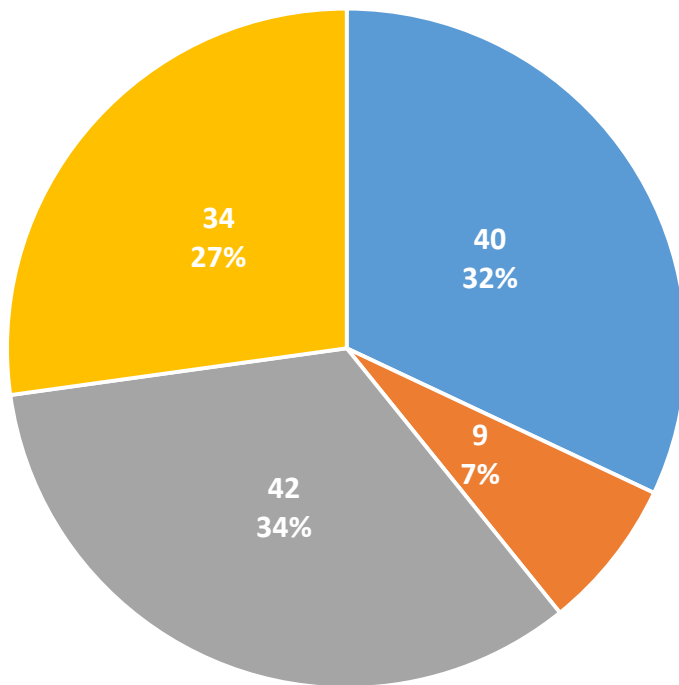


■ Yes ■ No

Based on 201 survey responses

Objective 1 – Pilot Statistics cont.

If the examiner did not use any references cited in the AIA Trial Petition, why?

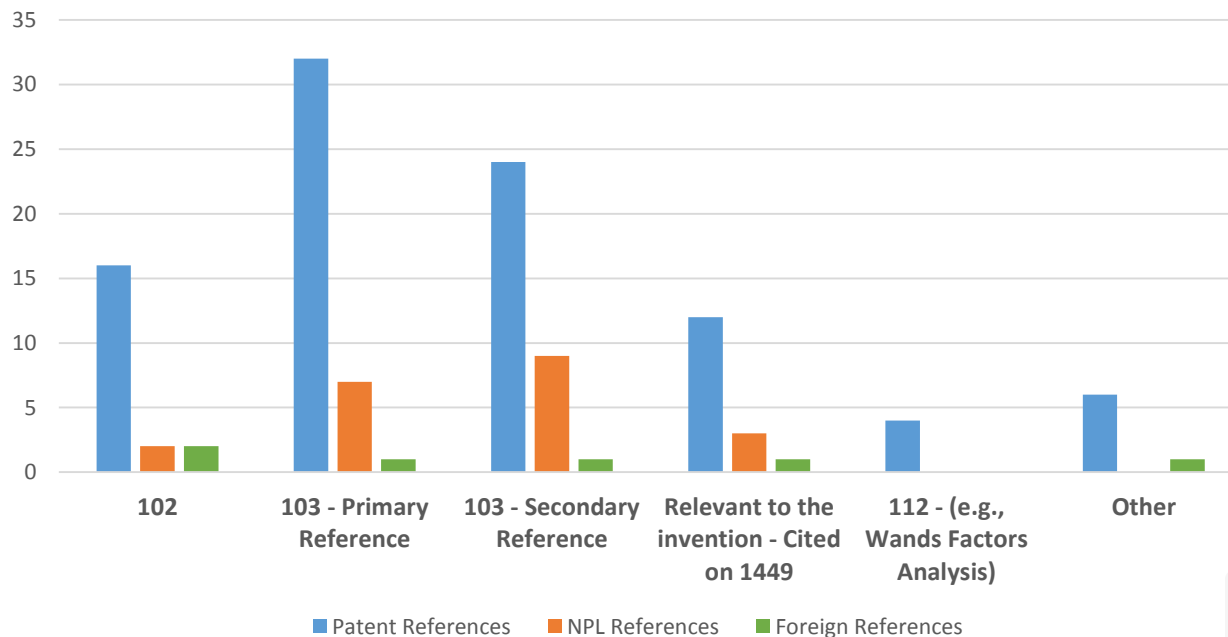


- The claims in my pilot case were substantially different from the parent case.
- I disagreed with the petitioner's analysis of the prior art and/or claims.
- I was able to find better art on my own.
- Other

Based on 102 survey responses

Objective 1 – Pilot Statistics cont.

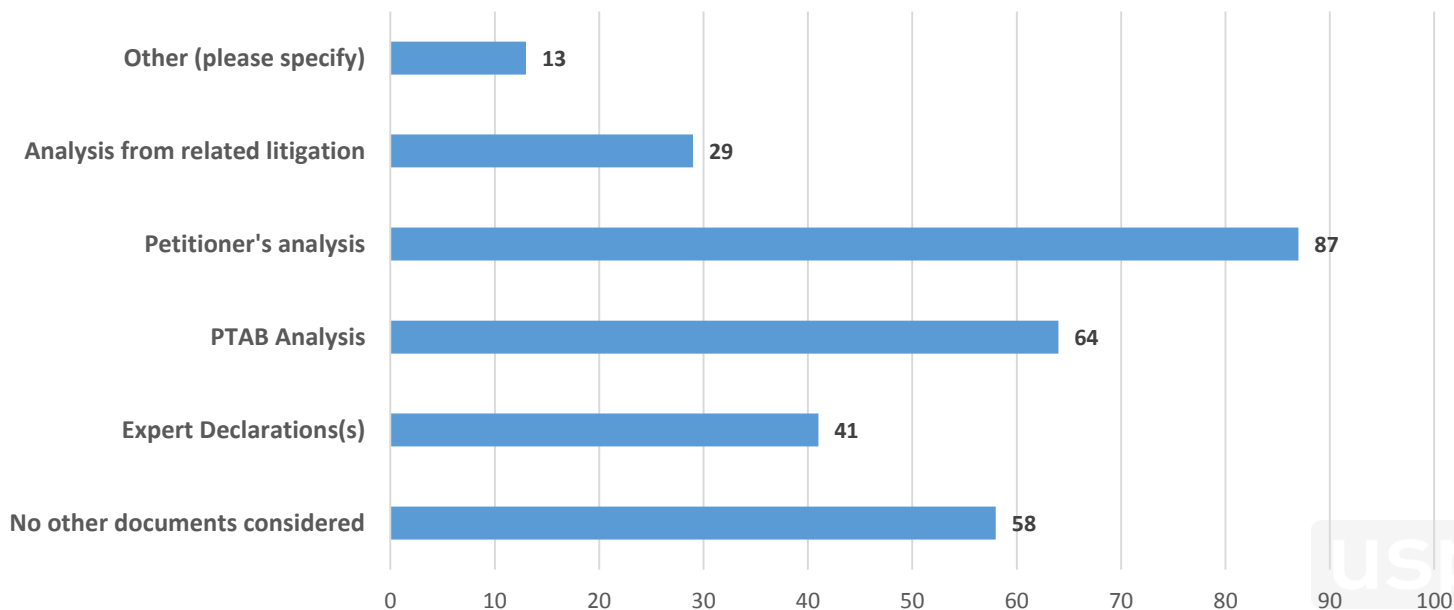
How did the examiner apply the AIA Trial reference(s) in the pilot application?



Based on 79 survey responses

Objective 1 – Pilot Statistics cont.

Did the examiner consider any other documents submitted with the petition, e.g., expert declarations, PTAB analysis?



Based on 174 survey responses.

Survey Comments

- All documents have been submitted in the IDS. Therefore, I did not need the access to the AIA data.
- The petition as a source of relevant art is a great use of information that the PTO had access to already- would love for other such relevant sources to be flagged for examiners (re-exam art? other programs?).
- The trial documents were not helpful in my case because the claims were so different, but I can see how the pilot could be very helpful if the claims were similar. So I think the pilot is generally a good idea.
- It's helpful to have the art/arguments when working on a sibling case of the application under petition... especially if it gets overturned.
- This is an excellent program and should absolutely continue.
- I felt important for the first time in years. I wish you guys would reinstitute the annual Legal Lectures that were a great sampling of court cases relevant to patents, so us examiners can keep up with legal precedence.
- The particular petition was related to 35 USC 101 rejection and nothing of prior art. This petition did not have to be referred to me because it did not help me finding any prior arts than what was already available to me from the parent application patent prosecutions.
- The number of documents submitted for analysis by the Examiner should be restricted to a reasonable number. In the present case, the IDS includes over 1000 pages for analysis. On top of that, the Examiner should consider the documents submitted by this Pilot. No time left for instant invention.
- I think it is a excellent tool for allowing the Examiner to see what is involved in litigation of a patent. I learned a lot from the filing and exhibits, e.g. having the terms of claim language be argued by the petitioners not just deciding whether the scope of patent claims overlaps. It was really eye-opening and great experience.

Objective 2 – Targeted Examiner Training

- Data collected from the prior art submitted, resulting examiner behavior and the survey, will provide a feedback loop on best practices
- Potential to educate examiners on:
 - Prior art search techniques
 - Sources of prior art beyond what is currently available
 - Claim interpretation
 - PTAB proceedings and how it relates to child applications

Objective 3 – Examining Corps Education

- Leverage results of all post grant proceedings (and post examination) to educate examiners on the process and results
 - Provide examiners a periodic review of post grant outcomes focusing on technology sectors
 - Utilize the proceedings to give examining corps a fuller appreciation for the process
 - Collecting Ex Parte PTAB decisions by technology to recognize trends for examiner education

Post Grant Outcomes Summary

- Learn from the results of post grant proceedings
- Shine a spotlight on highly relevant prior art uncovered in post grant proceedings
- Enhance patentability of determination of related child cases
- Build a bridge between PTAB and the examining corps

Next Steps

- Develop training and best practices gleaned from pilot and implement corps-wide
- Send your feedback to:
WorldClassPatentQuality@uspto.gov
- More information at the PGO Pilot home page:
<http://www.uspto.gov/patent/initiatives/post-grant-outcomes-pilot>

Questions and Comments

Jack Harvey

Assistant Deputy Commissioner for Patent Operations

(571) 272-3680

Jack.Harvey@USPTO.GOV



